

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-OR-354
)	
Forrester ET AL)	NAL/Acct. No.200332620010
Licensee of KLYR(AM))	
Clarksville, Arkansas)	FRN 0003784691
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 19, 2003

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Forrester ET AL (“Forrester”), licensee of KLYR(AM), Clarksville, Arkansas, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Commission's Rules (“Rules”).¹ Specifically, we find Forrester apparently liable for failing to maintain an effective locked fence around the base of the antenna tower for radio station KLYR(AM).

II. BACKGROUND

2. On November 6, 2002, an agent from the FCC Enforcement Bureau’s New Orleans Office inspected radio station KLYR(AM). At the time of the inspection, the fence around the field in which the tower was located had numerous openings with no fencing, affording unrestricted access to the tower. In addition, there was no fence at the base of the tower. The tower had radiofrequency potential at the base.

III. DISCUSSION

3. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed within effective locked fences or other enclosures. On November 6, 2002, there was no fence around the base of the antenna tower and the outer fence surrounding the field afforded many unrestricted access points.

4. Based on the evidence before us, we find Forrester willfully² violated Section 73.49 of the Rules

¹ 47 C.F.R. § 73.49.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent

by failing to maintain an effective locked fence around the base of the antenna tower.

5. Pursuant to Section 1.80(b)(4) of the Rules,³ the base forfeiture amount for AM tower fencing violations is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁴ Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Forrester ET AL, is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Rules by failing to maintain an effective locked fence around the base of the station’s antenna structure.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Forrester ET AL SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3)

to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁷ See 47 C.F.R. § 1.1914.

some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Forrester ET AL, P.O. Box 188, Clarksville, Arkansas 72830.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

Attachment